

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15665 of Joseph and Ruth Bell, pursuant to 11 DCMR 3107.2, for a variance to allow an addition to an existing nonconforming structure [Paragraph 2001.3(c)], and a variance from the minimum side yard requirements (Subsection 405.9) for an addition to connect a detached single-family dwelling with a nonconforming detached accessory garage in an R-1-A District at premises 3100 Ellicott Street, N.W. (Square 2267, Lot 1).

HEARING DATE: June 17, 1992
DECISION DATE: July 1, 1992

ORDER

SUMMARY OF EVIDENCE OF RECORD:

1. The property which is the subject of this application is located at 3100 Ellicott Street, N.W. (Square 2267, Lot 1). The subject lot is located on the south side of Ellicott Street between 32nd Street and Linnean Avenue, N.W. The property is zoned R-1-A. The subject lot is rectangular in shape and contains 23,500 square feet in land area. It is improved with a two-story plus basement single-family dwelling and a two-car accessory garage built in 1926. The lot is 100 feet wide and 235 feet deep. The rear yard measures 107 feet. The side yard to the west is 13 feet wide. However, because the accessory garage is located within the side yard to the southeast of the house, the eastern side yard is only five feet wide. There is a fountain and a swimming pool located behind the garage on the rear portion of the property.

2. The applicants propose to construct a second story addition above the garage and connect the main house with the garage by enclosing a portion of the existing porch. The addition will serve as a guest room. It will contain a bedroom, a bathroom, a closet and a wet bar.

3. The Zoning Regulations for the R-1-A District require side yards to measure at least eight feet in width. The east side yard is three feet short of the minimum width requirement. Consequently, the garage is a nonconforming structure.

4. The applicants are seeking a three-foot variance from the side yard requirement. They are also requesting a variance to allow an addition to a nonconforming structure.

5. The applicants maintain that they are faced with an exceptional situation because of the location of their existing garage which was built in or about 1925 in conformity with the then existing zoning laws. Further, they stated that a fountain with symmetrical French doors on each side centered on the garage is built into the rear wall of the garage. In addition, the in-ground spa and the in-ground swimming pool at the rear of the garage are both centered on the garage so as to make an integrated architectural design with the garage.

6. The applicants maintain that there are practical difficulties associated with constructing the addition in compliance with the Zoning Regulations.

First, they would have to tear down and move the existing garage which conformed with the Zoning laws when it was built.

Secondly, there is no other reasonable location for the additional bedroom. It cannot be built on the front or rear of the residence since it would completely obstruct (or eliminate) existing windows or french doors of the existing living room or bedrooms. It cannot be built on the west side of the house because that side yard only measures 13 feet and a new room could only be five feet wide. If they build a new garage in front of the existing garage and convert the existing garage into a bedroom, the new garage structure would eliminate the french doors to the existing living room as well as the light that comes through those doors. This is the only light that comes into the living room on the east side. Finally, moving the garage or setting the addition back would destroy the existing symmetry and integrated architectural design of the fountain, the spa and the swimming pool described above.

7. The applicants contend that the proposed addition will not be of substantial detriment to the public good. They testified that they have received the support of their adjoining neighbor to the west and another neighbor in the area. The applicant points out that their adjoining neighbor to the east objects to the proposal because they believe it will adversely affect their privacy, light and air. The applicants maintain that the proposed changes are minor and designed to have minimal impact on their neighbor. The applicants submitted a shadow study to demonstrate that the height of the addition will not substantially block the sunlight from their neighbors' house and patio.

8. The applicants pointed out that their neighbors have planted three Cypress trees on their property near the garage. The applicants maintain that these trees will do more to block the light to their neighbors' property than their proposed garage addition.

The applicants also relied on the analysis provided by the Office of Planning in concluding that their proposal will not be of substantial detriment to the public good and will not impair the intent, purpose or integrity of the zone plan.

9. By memorandum dated June 9, 1992, the Office of Planning (OP) recommended approval of the subject application. OP stated that the site is located in the Forest Hill neighborhood. The immediate area surrounding the site is residential and is developed with large, single-family dwellings.

The site is located in an R-1-A District which permits matter-of-right development of single-family detached dwellings with a minimum lot area of 7,500 square feet, a minimum lot width of 75 feet, a maximum lot occupancy of 40 percent, and a maximum height of three stories/40 feet. A minimum depth of eight feet for each side yard is required in an R-1-A District.

OP stated that the existing dwelling and garage, combined with the proposed additions, would be well within the limits of the requirements for lot area, lot occupancy, lot width and parking spaces in an R-1-A District. With the addition, the lot area, lot width, rear and side yard measurements will not change. The addition will not extend the existing nonconformity of the side yard. The total lot occupancy of the existing structures and the proposed additions would be 10.84 percent, which is 29.16 percent less than the 40 percent permitted in an R-1-A District.

OP is of the opinion that the relief sought in this application is minor. OP noted that the applicants could construct a three-story, 40-foot high structure as a matter-of-right if the eastern wall of the garage was three feet back from where it currently stands.

The Office of Planning believes that a practical difficulty exists in this case because of the nonconforming status of the subject garage and its location on the property. The garage was built long before the current Zoning Regulations were enacted.

OP stated that the objecting neighbor has recently installed plantings along the west edge of his property, approximately eight feet east of the proposed addition. The plantings include a row of Leyland Cypress. Leyland Cypress is the fastest growing local evergreen, growing as much as four feet a year and reaching an ultimate height of 40 feet or more. The Leyland Cypress, in the course of a few years growth, will far more significantly impact the objecting neighbors' light and air (as well as the light and air of the applicants) than the proposed addition. The objecting neighbor also has existing mature evergreen plantings which obscure

his facing windows on the first and second floor, the same area where the objecting neighbor claims light to his house will be diminished.

In the opinion of the Office of Planning, the proposed additions to the existing dwelling would not impair the intent and purpose of the Zoning Regulations and Map, nor would they significantly impact on the light or air of abutting properties.

Finally, OP stated that the subject property meets or exceeds all of the requirements of the R-1-A District except the width of the east side yard. Therefore, the Office of Planning recommends approval of this application.

10. By letter dated March 26, 1992, the Metropolitan Police Department commented on the application. The department stated that the property is located in the Second District and is patrolled by Scout Car 65. It stated further that based on its review of the application, it does not appear that the proposed change will affect the public safety in the immediate area or generate an increase in the level of police services now being provided. Accordingly, the department does not oppose this application.

11. By memorandum dated May 13, 1992, the Fire Department stated that it has evaluated the application to determine its impact on emergency operations, and it has no objections to the relief requested.

12. Advisory Neighborhood Commission (ANC) 3F, submitted a report dated May 22, 1992. The ANC stated that it voted to oppose the application and to adopt a resolution to that effect. The resolution states that the ANC objects to the application for the following reasons:

The required side yard in R-1-A is 8 feet; the present garage is only 5 feet from the side line. To build a second story on this garage would keep light and air from the neighbor's [sic] next door, loom over the neighbor's patio and infringe on the privacy of that side of the neighbor's house, "Grandfather" provisions (of the 1958 law) should not permit increased intrusion of a structure which is nonconforming under present zoning regulations.

13. One neighbor, residing at 3060 Ellicott Street, N.W., testified in opposition to the application on behalf of his wife and himself. Their property is located adjacent to the subject property on the side closest to the garage.

The opponents maintain that there is nothing unique about the property. At least a few other lots in the neighborhood have accessory garages located in the side yard.

14. The opponents testified that the applicants could build their guest room addition at another location on the lot. They suggested that the applicants could use the garage as the guest room and build another garage in front of the existing garage structure. The opponents maintain that the applicants have not demonstrated that they cannot construct the addition elsewhere on the lot.

15. The opposing neighbors stated that the proposed addition will adversely affect the use their property. They stated that the applicant's garage is set back on the subject lot such that it is located near the rear of their own house, their rear yard and patio.

The neighbor stated that he and his wife oppose the application because building the addition on top of the garage would obstruct the flow of light and air to their property. The witness testified that he was unaware of what the applicants shadow study showed, but he was still concerned with the flow of light during winter afternoons.

16. The opposing neighbors planted two arborvitae trees on the side of their patio. They maintain that these trees do not block the light from their windows. They also planted three Leland Cypress trees touching each other, for the length of the garage structure to possibly offset the proposed project.

17. The opposing neighbors stated that the proposed addition will loom directly over their living room, dining room, den and patio. According to the applicants' plans, wide windows are to be installed in the guest room at the rear. Consequently, the neighbors argue, use of the new addition will adversely impact on their privacy.

18. The opponents stated they are attempting to sell their house and they have been informing prospective buyers of the applicants' plans. They noted that they have received no offers to purchase. The neighbors do not consider the addition to be minor and they are concerned about the effect that the addition will have on their property value.

FINDINGS OF FACT:

Based on the foregoing summary of evidence the Board finds as follows:

1. There is no evidence that other properties in the area are architectually similar to the applicants' property at the rear.

2. The proposed addition will not prevent adequate light and air from flowing onto the adjoining neighbors' property.

3. The proposed addition will have a negligible impact on the privacy of the adjacent neighbor. The proposed wide windows face south, away from the adjacent neighbors' property. The size and location of the windows on the side of the proposed addition facing the adjacent neighbors' property offers little opportunity to see out of them.

CONCLUSION OF LAW AND OPINION:

Based on the foregoing findings of fact and evidence of record the Board concludes that the applicants are seeking a variance to allow an addition to an existing nonconforming structure. Granting such variances requires a showing through substantial evidence of a practical difficulty upon the owner arising out of some unique or exceptional condition of the property such as exceptional narrowness, shallowness, shape or topographical conditions. The Board further must find that granting the application will not be of substantial detriment to the public good and will not substantially impair the intent, purpose and integrity of the zone plan.

The Board concludes that the applicant has met the burden of proof. The subject lot was created prior to the enactment of the Zoning Regulations in 1958 and is therefore nonconforming with regard to side yard requirements.

The Board is of the opinion that the property is unique because of the architectural design of the rear of the property. To move the garage over three feet would destroy the architectural design and symmetry of the rear of the property. Further, to attach the addition to another part of the house would cut off light to existing rooms. Therefore, the Board is of the opinion that the applicant faces a practical difficulty in siting the addition.

The Board is of the opinion that the design of the proposed addition will ensure a reasonable amount of privacy on the adjacent neighbors' property. The Board is further of the opinion that the proposed addition will not substantially reduce the amount of light or air to the adjacent property. Therefore, the Board concludes that to grant the variance will not be of substantial detriment to the public good.

The Board is of the opinion that the relief requested is minor and will not impair the intent, purpose and integrity of the zone plan.

The Board has accorded ANC 3F the "great weight" to which it is entitled.

In light of the foregoing, the Board concludes that the application is hereby **GRANTED**.

VOTE: 3-0 (Carrie L. Thornhill and Paula L. Jewell to grant; Lloyd D. Smith to grant by proxy; Angel F. Clarens not voting, not having heard the case; Sheri M. Pruitt not present not voting).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


MADELIENE H. ROBINSON
Acting Director

FINAL DATE OF ORDER:

DEC 15 1992

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

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UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

15665Order/bhs

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 15665

As Acting Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on DEC 15 1992 a copy of the order entered on that date in this matter was mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

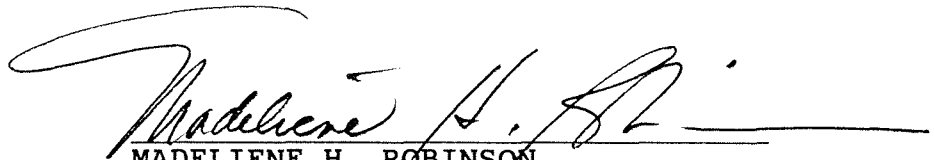
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MADELIENE H. ROBINSON
Acting Director

DATE: DEC 15 1992

15665Att/bhs